IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8907 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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SATYA PAL GUSAIN

Versus

STATE OF GUJARAT

Appearance:

PARTY-IN-PERSON for the Petitioner.

Mr.Premal Joshi, Assistant GOVERNMENT PLEADER, for the Respondent.

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 04/07/2001

C.A.V. JUDGEMENT

1. By way of this petition under Article 226 of the Constitution of India, the petitioner has challenged the legality, validity and powers of the authority to initiate departmental enquiry against him and has prayed for setting aside the departmental proceedings on the ground that it is not open for the authority to initiate

departmental enquiry after his retirement from service.

2. The detailed facts leading to the petition are as under :-

The petitioner was recruited through the Gujarat Public Service Commission as Deputy Collector, and, ultimately, the petitioner has retired on 30.6.2000 on attaining 58 years of age. According to the petitioner, after he handed over the charge on the evening of 30th June, 2000, he was served with a charge-sheet on the same day, i.e. 30th June, 2000. A copy of the charge-sheet issued to the petitioner on 30th June, 2000 is annexed to the petition. Seven charges are levelled against the petitioner which are as under :-

(1) That during the period between 1986-'87 and 1988, the petitioner has not deducted House Rent Allowance amount and has misappropriated Government money and accordingly, has committed misconduct under the Gujarat Service Conduct Rules, 1971;

(2) For the Block Year 1984-'85, he has got the benefit of Home Town Travel Allowance and though such Home Town Travel Allowance was enjoyed, he has not annexed railway receipt and accordingly, he has misappropriated Government money;

(3) During the period 1986-'87, by not obtaining permission from the District Magistrate, he enjoyed Home Town Travel Allowance claiming amount of two tickets more as compared to earlier block period.

(4) Withholding of one increment of his subordinate employee for which he had no power;

(5) Not producing C.L. report for a period of three days when the petitioner went on leave from 16.5.1989 to 18.5.1989 and during that period, he had served as supervisor in K.P. Shah Law College without taking prior permission of the Department;

(6) Enjoyed the leave for the year 1989 like compensatory leave, C.L., optional leave, etc. and his conduct was unbecoming the status of a Class I Officer; and

(7) Non-maintenance of necessary register, etc. It

was found out during inspection of the office of the petitioner through the District Magistrate and Civil Defence Department and accordingly, he has shown negligence as Head of the Department.

3. The petitioner was asked to give his defence letter within 30 days from the date of receipt of the said charge-sheet. It is stated in paragraph 5 of the said order that the petitioner is to retire on 30th June, 2000 and since the enquiry could not be concluded before his retirement, under Rule 189A of the Bombay Civil Services Rules, 1959 ("B.C.S.R.", for short), the enquiry will be continued after his retirement.

4. The petitioner has challenged the aforesaid action on the ground that the Authority has no power to initiate the enquiry after his retirement. It is submitted by the petitioner that the action of the Department is mala fide and that since the initiation of the enquiry is after his retirement, the initiation of the enquiry is not permissible under Rule 189-A(b). It is submitted by the petitioner that the departmental proceedings were not instituted while he was in service, but it was instituted after his retirement. Such enquiry cannot be instituted without the sanction of the Governor and that as the incident in question is more than four-year old, under the said provision, the said enquiry cannot be instituted against him. It is also further submitted that looking to the fact that the enquiry is initiated after such a long time, such delayed enquiry should be treated as contrary to the principles of natural justice and to hold enquiry after such a long time is arbitrary, and illegal and, therefore, no such enquiry should be allowed to be continued and the authority has no power to continue such enquiry. On the aforesaid grounds, the petitioner has challenged the aforesaid charge-sheet issued to him. He further submitted that he had already handed over his charge after office hours on 30th June, 2000 and, thereafter, charge-sheet was issued to him in the late evening and, therefore, since he has already retired, after office hours, he cannot be said to be in service after the evening of 30th June, 2000 and, therefore, it was not open for the authority to serve him charge-sheet after his retirement from service. He submitted that after retirement, if the charge-sheet is required to be served, then provisions of Rule 189-A(b) are applicable and without following them, it is not open for the Authority to issue charge-sheet against him.

5. On behalf of the State Government,

affidavit-in-reply is filed by the Deputy Secretary, Revenue Department, Gandhinagar. In paragraph 3 of the reply, it is pointed out that while the petitioner was serving under the Home Department as a Deputy Director (Civil Defence), Jamnagar, certain irregularity came to the notice of the Department regarding taking Home Town Travel Concession and some misappropriation of amount and certain irregularity in service, and for that, Home Department made proposal after holding preliminary enquiry. Reference was made regarding earlier petition of the petitioner on the ground that it has no relation with the present departmental proceedings.

In paragraphs 8 and 9, it is stated that the charge-sheet was given to the petitioner before his retirement. It is stated that regarding allegations made in the charge-sheet, relevant documents are sent to the petitioner, but certain documents are to come from the Home Department and all the documents would be sent to the petitioner after receiving the same from the Home Department, as the departmental enquiry proceeded on the basis of the say of the Home Department.

There is a further affidavit-in-reply, which is at page 36. In the said further reply, the Department tried to explain the delay in initiation of the enquiry against the petitioner. In paragraph 3 of the said reply, it is stated as under :-

> " ... ...
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> 3. I have already filed affidavit in reply on 18th Sept. 2000 and I am filing this additional affidavit in reply in support of the aforesaid reply. I further say and submit that the petitioner was deputed as Deputy Controller, Civil Defence, Jamnagar, on the relevant point of time i.e. on 24/9/1986 to 9/4/1990. During the course of discharging his duties in the aforesaid post, certain irregularities were found to be committed by the petitioner and complaints were received to the Home Department. It is respectfully submitted that the home department received the letter dated 2/7/1988 of Vigilance Commission wherein the complaint dated 25/5/88 of one Mr.H.G. Thakkar was referred to for the aforesaid irregularities on 28/7/88. The Director ACB forwarded a letter in which the

complaint of Mr.J.K. Ganatra was referred to. It is further submitted that the Home Department by way of this letter dt. 16/12/88 forwarded the aforesaid two complaints to the Director, Civil Defence, for sending report after conducting the inquiry. In the meanwhile, the Collector, the Controller Civil Defence, Jamnagar in a surprise checking of the office of the petitioner found that the petitioner has committed certain financial irregularities and the Collector Jamnagar who is also ex-officio Controller Civil Defence Jamnagar sent his report vide letter dated 13/6/89 to the Director Civil Defence. The Director Civil Defence has submitted above inquiry report to the State Govt. by letter dated 21/7/89. It is further submitted that the aforesaid two complaints were inquired by Mr.A.M. Chauhan, Dy. Director, Civil Defence, and he submitted a report to the State Government vide letter dated 6/10/89. It is further submitted that in view of the report of the Collector and ex officio Controller, Civil Defence, Jamnagar, the State Govt. directed Mr.A.R. Bhatt, Dy. Director, Civil Defence to inquire into the aforesaid report dated 21/7/89 and submit his report within 30 days to the State Govt. On 4/3/1991 Principal Secretary, Home Deptt. instructed the Director of Civil Defence, Gujarat State to complete the inquiry with regard to the irregularities committed by the petitioner within 7 days. It is submitted that since Mr.A.R. Bhatt could not submit his report to Director Civil Defence the said inquiry was assigned to Mr.J.K. Gohil former Principal of Civil Defence Training School, Ahmedabad. Director Civil Defence has forwarded the proposal vide letter dated 12/3/91 to the State Govt. to inquire into the same through Director, ACB as there is prima facie case with regard to the serious administrative and financial irregularities against the petitioner. The said file was sent to the Special Branch-I on 14/11/91 for necessary further action but unfortunately the said file did not traced out in the Special Branch-I till date.

It is respectfully submitted that my office has written a letter to the Home Department on 21/11/1996 to send the final report in this regard upto 28/11/96 again reminder was sent to the Home Department for the same. It is further submitted that my department has again written letter on 2/2/2000 to the Home Department to send the final report with regard to the preliminary inquiry as the petitioner was to retire on 30/6/2000. With regard to the file of the petitioner which was sent to Spl. Branch of the Home Department and after series of the reminder to that branch dated 31/3/2000, 3/4/2000, 7/6/2000, 9/6/2000, 16/6/2000. On 3/4/2000 the Home Department directed the office of the Director Civil Defence to send the report and information with regard to the case of the petitioner as early as possible. By way of the letter dated 14/6/2000 the Director Civil Defence sent Xerox copies of the inquiry report against the petitioner to the Home Deptt. After perusing the aforesaid reports received from the office of Director Civil Defence, the Home Department sent the said file to my office on dt. 27/6/2000 as there is a prima facie case in the preliminary inquiry against the petitioner. My office instructed the Home Department to send the draft of the charge sheet along with the file of the petitioner and the draft of the charge sheet along with file was received by my office on 30/6/2000 and the same was served to the petitioner prior to his retirement.

In view of the aforesaid facts and circumstances, it is not correct to say that no preliminary inquiry has been conducted prior to the serving of the charge sheet. In my respectful submission there is no inordinate delay as alleged by the petitioner in serving the charge-sheet as a matter of fact the preliminary inquiry was conducted and the file was misplaced in the Special Branch-1 and hence some delay has been caused but it cannot be said that the department sat idly for the years over the file.

... ..."

6. I have heard party-in-person Mr.Gusain and learned AGP for the State Government. The question which requires consideration is whether the charge-sheet can be said to have been issued to the petitioner after his retirement from service, which would disentitle the respondent to hold enquiry under Rule 189A of the BCSR or can it be said that the enquiry was initiated against the petitioner while he was in service. The other question which requires consideration is whether the enquiry is bad in law on the ground of unreasonable delay in initiating the enquiry against the petitioner and in view of such delay, whether it can be said that the action of initiation of the enquiry is arbitrary, mala fide or illegal. The petitioner also submitted about the merits of the charges. However, this Court cannot, at this stage, decide the merits of the case to find out whether the petitioner was responsible for the alleged misconduct or not. Since the petition is filed at the time of enquiry, this Court cannot go into the aforesaid question at this stage of the departmental proceedings.

7. There is some controversy between the petitioner and the respondent as to the actual time of serving the charge-sheet to the petitioner. It is the say of the petitioner that after he handed over the charge in the evening, subsequently, when he went home, the charge-sheet was served upon him, while the say of the Department is that, as such, it was served to him earlier in the evening. However, the learned AGP stated that, in any case, it is not in dispute that the said charge-sheet was issued to the petitioner before midnight, i.e. 12.00 O'Clock at night on 30th June, 2000. Therefore, it is not in dispute that the said charge-sheet was issued to the petitioner before 12.00 midnight on 30th June, 2000. Now, whether the Department can serve such charge-sheet after office hours is also a question which requires consideration.

8. At this stage, reference is required to be made to Rule 189-A of the BCSR. The said Rule reads as under :-

" ... ...

189-A. The Governor reserves the right of withholding or withdrawing a pension or any part of it, whether permanently or for a

specified period and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government if in a departmental or judicial proceeding, the pensioner is found guilty of grave misconduct or negligence during the period of his service, including services rendered upon re-employment after retirement :

Provided that-

(a) such departmental proceeding, if instituted while the Government servant was in service whether before his retirement or during his re-employment shall after the final retirement of the Government servant be deemed to be a proceeding under this rule and shall be continued and concluded by the authority by which it was commenced in the same manner as if the Government servant had continued in service :

(b) such departmental proceeding if not instituted while the Government servant was in service, whether before his retirement or during his re-employment.-

(i) shall not be instituted save with the sanction of the Governor;

(ii) shall not be in respect of any event which took place more than 4 years before such institution; and

(iii) shall be conducted by such authority and in such place as the Governor may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service;

xxx xxx xxx

(d) the Gujarat Public Service Commission shall be consulted before final orders are passed.

Explanation.-For the purpose of this rule-

(a) a departmental proceeding shall be deemed to be instituted on the date on which the statement of charges is issued to the Government servant or pensioner, or if the Government servant has been placed under suspension from an earlier date, on such date; and

(b) a judicial proceeding shall be deemed to be instituted.-

(i) in the case of a criminal proceeding on the date on which the complaint or report of the police officer on which the Magistrate takes cognizance, is made, and

(ii) in the case of a Civil proceeding, on the date of presentation of the plaint in the court.

... ..."

Reading the aforesaid Rule, it is clear that, on termination of departmental or judicial proceedings, if a person is found guilty of grave misconduct or negligence during the period of his service, then the Governor can withhold or withdraw a pension or any part of it, either permanently or for a specified period, including the right of recovery from a pension of such Government employee regarding any pecuniary loss which can be said to have been caused to the Government. The said provision of Rule 189-A is subject to provisos (a) and (b). So far as Rule 189-A(a) is concerned, it is clear that if the departmental proceeding is pending when the Government servant was already in service, such enquiry can continue after the final retirement of the Government servant, meaning thereby, that a pending enquiry is not affected even if a Government servant subsequently retires if such enquiry is initiated prior to his retirement. However, if such departmental proceedings were not instituted while such Government servant was in service, then, such proceedings cannot be instituted without the sanction of the Governor as well as it cannot

be instituted if the event had taken place more than four years before such institution. Reading the aforesaid Rule, it is clear that so far as period of four-year limitation which is prescribed in Rule 189-A(b)(ii) is concerned, the same is applicable in case the enquiry is initiated after the Government servant had retired from service. If the proceedings are initiated against the Government servant while he was in service, then such proceedings can continue even after his retirement under Rule 189-A(a) and in that eventuality, the limitation regarding the period of four years is not applicable, as the same will have application only when the enquiry is initiated after retirement. The first question which requires consideration is whether the departmental proceedings can be said to be instituted against the petitioner while he was in service or that it is initiated after his retirement, i.e. while he was not in Government service.

9. As stated earlier, in the instant case, the charge-sheet was served on the petitioner on 30th June, 2000, which is the date on which he retired from Government service on attaining 58 years of age. The say of the petitioner is that it was not served to him during office hours and that it was served at late evening and after he had handed over his charge. As stated earlier, it is not in dispute that such charge-sheet was issued to the petitioner before 12.00 at midnight on the same day. So far as Rule 189-A(b) is concerned, it deals with the situation where the Government servant was not in service at the time of institution of the departmental proceedings against him. It is, therefore, required to be found out whether the petitioner can be said to be in Government service at the time when he was served with the charge-sheet. Reference is required to be made to the definition of `day', given in the B.C.S.R. `Day' is defined in Rule 9(15) and it reads as under :-

... ...

> 9. Unless there be something repugnant in the subject or context the terms defined in this Chapter are used in the rules in the sense here explained :-
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> xxx xxx xxx
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> (15) Day means a calendar day beginning and ending at midnight, but an absence from headquarters which does not exceed

twenty-four hours shall be reckoned for all purposes as one day at whatever hours the absence begins or ends.

... ..."

In view of the said definition, it is clear that the petitioner can be said to have been in service upto midnight of 30th June, 2000 and, therefore, if the departmental proceedings are initiated upto last day of his service, which is 30th June, 2000, it cannot be said that the petitioner was not in service after office hours of 30th June, 2000. For that purpose, even if the petitioner had handed over charge during office hours, still, he remains in Government service upto midnight and since it is not in dispute that before midnight of 30th June, 2000, charge-sheet was served on the petitioner, it cannot be said that it was not open for the Department to issue charge-sheet in question to the petitioner. As stated earlier, the petitioner can be said to be in service upto midnight and, therefore, charge-sheet can be said to have been issued to him and departmental proceedings can be said to have been initiated against him while he was in Government service, and once it is held that the departmental enquiry was initiated against the petitioner while he was in service, then, under Rule 189-A(a), it is open for the Department to continue such enquiry even after his retirement in the same manner as if the Government Servant had continued in service and in such circumstances, it is not necessary to resort to Rule 189-A(b) as the same will have application only when the departmental enquiry is initiated after the retirement of the Government servant.

10. The petitioner has relied on certain judgments to substantiate his say that the departmental enquiry should not have been allowed to be proceeded against him. He relied upon the judgment of the Supreme Court in Vijay L. Mehrotra v. State of U.P. and others, 2000-II LLJ 267, wherein the Supreme Court has held that in case of employee retiring after having rendered service, it is expected that all the payments of retiral benefits should be made on the date of retirement or soon therafter, if for some unforeseen circumstances, the payments could not be made on the date of retirement. However, the instant case is not a case where there is a delay in finalising the pension papers of the petitioner. Here, departmental enquiry is initiated resorting to Rule 189-A(a) of the B.C.S.R. and the petitioner has been given provisional pension subject to the outcome of the enquiry.

11. The petitioner thereafter has relied on the decision of the Apex Court in State of Madhya Pradesh v. Bani Singh and another, 1990 (supp) SCC 738. In the said judgment, the Supreme Court has held that after a delay of 12 years in initiating disciplinary proceedings, for which no satisfactory explanation is given, it would be unfair to permit the departmental enquiry to proceed at such a late stage. The Supreme Court found that there is no satisfactory explanation for such delay in issuing charge memo and it was further held that it will be unfair to proceed with the departmental enquiry in view of such delay.

12. The petitioner has also relied upon the judgment of the Supreme Court in B.J. Shelat v. State of Gujarat and another, 1978 Service Law Weekly Reporter 199. While interpreting Rule 161(2)(ii), the Supreme Court held that the disciplinary proceedings after the date of retirement of the employee was not proper. It is required to be noted that, in the instant case, the departmental enquiry is initiated under Rule 189-A(a) of the BCSR and on the conclusion of the enquiry, now since the petitioner has already retired, such enquiry can be continued to find out whether there is any financial loss to the Government because of the so-called misconduct of the delinquent and also to find out if there is any pecuniary loss to the Government. In the instant case, it cannot be said that the enquiry was initiated against the petitioner after his retirement.

13. The petitioner has also relied upon the judgment of this Court in M.N.Mewada v. State of Gujarat and another, 1976(2) SLR 666. In the aforesaid case, the employee was allowed to retire from the Government service. The pensioner started drawing his pension which was sanctioned by the authorities and at that stage, the authority never thought it fit to effect cut in his pension and his full pension was sanctioned and subsequently, the State Government decided to impose pension cut, on the ground of alleged misconduct which took place in 1959-'60, after a period of six years after his retirement. At the relevant time, there was no provision in Rule 189 providing any limitation for initiating such departmental proceedings, as new Rule 189-A was inserted later on, i.e. on October 29, 1971. The Court, however, considered the fact that the employee was allowed to retire and that full pension was sanctioned in favour of the employee and, not only that, the so-called misconduct had occurred 8 years back and the State Government decided to impose the pension cut six years after his retirement. Under the aforesaid

facts, it was found by the Court that the said action of initiating departmental proceedings was bad in law as it should have been commenced within a reasonable time.

14. The petitioner has also relied upon the judgment of this Court in K.B. Desai v. State & anr., XXV(1) GLR 556. This Court found that the departmental enquiry is initiated only when the show cause notice is served and such proceeding must be initiated while the Government servant is in service. If the Government servant had retired, then such proceedings can be started with the sanction of the Governor, but after retirement, such consent cannot be in respect of events happened more than four years ago.

15. The petitioner has also relied upon the decision in Satya Pal Gusain v. State of Gujarat, 1997 (2) GCD 26, wherein the present petitioner himself was a party and he had challenged penalty order which was passed against him as regards an enquiry. This Court, after going through the charges and evidence on record, came to the conclusion that delay of 8 years in starting enquiry and 7 years in conducting the enquiry, was inordinate. Under the said circumstances, the order of penalty was set aside.

16. The petitioner has relied upon certain judgments of other High Courts regarding delay in initiation of enquiry. He also submitted that in view of the judgment of this Court in Mohanbhai Dungarbhai Parmar v. Y.B. Zala and anr., XX GLR 497, long delay in taking steps for holding enquiry must be considered as denial of reasonable opportunity. In the said case, the Disciplinary Authority took steps after five-and-half years regarding remaining absent without leave. On such facts, the Court found that such inordinate delay must be considered as denial of reasonable opportunity.

17. As discussed earlier, the charge-sheet was issued to the petitioner on the date of his retirement and it cannot be said that when it was issued to him, he was not in Government service. Therefore, under Rule 189A(a), it was open to the State Government to initiate such departmental enquiry against the petitioner, treating him as in Government service. So far as clause (a) is concerned, there is no limitation, like the one in clause (b), i.e. the event must occur within a period of four years of his retirement. However, the question which requires consideration is whether simply because no such limitation is prescribed in Rule 189-A(a), would it be proper on the part of the State Government to initiate

enquiry after an unreasonable period of limitation and whether there is any explanation given to justify such delay. Looking to the charge-sheet, there is some substance in the argument of the petitioner that there is an inordinate delay in holding the departmental enquiry against the petitioner as regards the charges in question.

18. So far as charge No.(2) is concerned, it pertains to getting benefit of Home Town Travel Concession for the period of 1984-'85 and the allegation is that the petitioner had not annexed railway voucher after completing the journey. Now, it is too late in the day to say that 15 years back, some railway voucher was not annexed by the petitioner. The petitioner's apprehension on this ground is reasonable that he may not be able to defend such charge in view of the fact that the incident in question had happened more than 15 years back.

19. Similar is the position regarding charge No.(3), i.e. regarding not taking prior approval from the District Magistrate and claiming additional amount of two tickets. So far as charges (4) to (7) are concerned, they are not relating to any financial irregularity at all. Regarding Charge No.(4), the same is in connection with withholding increment of one employee, though as per the charge, the petitioner was not authorized to do that. The date of incident is also not mentioned there. Charge No.(5) is regarding taking C.L. without submitting any report, from 16.5.1989 to 18.5.1989. It is too much to hold enquiry regarding the aforesaid alleged misconduct after such a long delay. Same is the case regarding charge Nos. (6) and (7) as the same are related to very stale incidents regarding taking C.L. etc. or not maintaining register at the relevant time. Charges (4) to (7) even do not relate to any financial irregularity on the part of the petitioner and they have been framed half-heartedly. It would not be just and proper for the department to hold enquiry on such charges against the petitioner for such stale incidents. Even though no specific limitation is prescribed so far as cases falling under Rule 189A(a) are concerned, nonetheless, the enquiry is required to be initiated within a reasonable and proper time. Looking to the fact that the aforesaid incidents are absolutely stale, it may not be fair on the part of the Department to ask the petitioner to face such charges after such a belated stage. The said action of the Department, therefore, to proceed to frame such charges and to proceed against the petitioner as regards the said charges, is absolutely unreasonable as it will be impossible for the petitioner

to defend his case as one may not have photogenic memory to remember all those things which had happened years back. Therefore, while coming to the conclusion that the case falls within the provisions of Rule 189A(a) and while upholding the say of the Government that the Government servant is deemed to have been in service upto midnight of the date of retirement, I am of the opinion that looking to the fact that the aforesaid charge Nos.(2) to (7) are related to a very stale period and considerable time has passed and regarding certain charges, even there is no charge of financial irregularity or loss to the Government, I think it fit to direct the respondents not to proceed against the petitioner regarding the aforesaid charges, which relate to old incidents in question and it may not be possible for the petitioner to defend himself as regards these charges which are of a very stale nature. Under the circumstances, the Government is directed not to proceed against the petitioner regarding charges (2) to (7).

20. So far as charge No.(1) is concerned, it is regarding non-payment of certain dues towards house rent allowance for the period between 1986-'87 and 1988. So far as the said charge is concerned, it definitely relates to some financial loss to the Government and if in the enquiry, it is found that the amount, which was required to be paid by the petitioner, was not paid by the petitioner, then, it will amount to misappropriation of Government amount. On the conclusion of the enquiry, if the said fact is proved, under Rule 189-A, there is a provision for recovery of the said amount. It is no doubt true that the said incident is also a stale one, as it relates to 1986-'87 and 1988. However, justification is given in the further affidavit-in-reply regarding missing file, etc. As a matter of fact, preliminary enquiry was already initiated regarding that charge at the relevant time, but, unfortunately, the file was not traceable. It is mentioned in the further affidavit-in-reply at page 38 that the concerned file was not traceable till date and, subsequently, the Revenue Department wrote a letter to the Home Department and, thereafter, reminder was also sent to the Home Department and it is also mentioned that the Revenue Department, wrote a letter on 2.2.2000 to the Home Department to send the final report with regard to the preliminary enquiry as the petitioner was to retire on 30.6.2000, and after a series of reminders, on 3.4.2000, the Home Department directed the Office of the Director, Civil Defence, to send the report and information with regard to the case of the petitioner as early as possible. By way of letter dated 14.6.2000, the Director, Civil Defence, sent xerox

copies of the enquiry report against the petitioner to the Home Department, and after perusing the aforesaid reports received from the Office of the Director, Civil Defence, the Home Department sent the said file to the Revenue Department on 27.6.2000. Only at that stage, the Home Department received necessary papers and since it was found that there was a prima facie case in the preliminary enquiry against the petitioner, the Revenue Department instructed the Home Department to send a draft of the charge-sheet along with the file of the petitioner and the draft of the charge-sheet along with the file, was received by the Revenue Department on 30.6.2000 and the same was served to the petitioner prior to his retirement. The said averment is made in additional affidavit-in-reply at page 39. Therefore, it is clear that preliminary enquiry was initiated against the petitioner since long and the internal correspondence between two departments resulted in such a long delay. However, it cannot be said that there is no explanation on the part of the Revenue Department so far as delay part is concerned.

The petitioner was a high ranking officer in the Government and now, certain events are within the knowledge of the petitioner whether some amount is to be paid to the Government or not and the same can be a matter of scrutiny which can be found out from the relevant record. In any case, the petitioner can point out the correct facts regarding the said charge and lead proper evidence in defence of the said charge, by producing pay slip etc. Under these circumstances, I direct the State Government to confine the departmental proceedings against the petitioner regarding charge No.(1), i.e. regarding non-deduction of certain amount towards house rent allowance between 1986-'87 and 1988. So far as rest of the charges are concerned, looking to the staleness of such charges and looking to the nature of such charge, it would not be just and proper to proceed against the petitioner. I, therefore, direct the Department to continue the departmental proceedings against the petitioner regarding charge No.(1). It is needless to say that after the conclusion of the enquiry, if question of effecting deduction of any amount from the pension of the petitioner arises, then, naturally, the provisions of Rule 189-A of the BCSR are required to be followed.

21. It is clarified that this Court has not expressed any opinion on the merit of the concerned charge and it is for the department to take proper decision as per the evidence on record. Since the petitioner has already

retired from service, the Government may complete the proceedings as early as possible, preferably within a period of three months from the date of receipt of the writ from this Court.

22. Attempt should be made by the Government to initiate enquiry if at all it is required to be held against a government servant without waiting till the last date of his service. Simply because there is no limitation under Rule 189-A(a), it does not mean that always the Government can wait till the last moment or at least till midnight of the last day when the Government servant can be said to be in service, for initiating enquiry. It is hoped that if at all an enquiry is required to be initiated against a government servant who is in service, such proceedings, if it is required to be initiated, should be initiated at least few days in advance from the date of his retirement and it may not be proper to wait till the last moment or upto the midnight of the relevant date when such person is going to be superannuated. In a given case, such action can be construed as victimization. So, in order to rescue itself from such allegation it is desirable that in case the enquiry is required to be made, without waiting till the last minute, such enquiry should be initiated well in advance so that the Government can rescue itself from such allegation. However, since in the instant case, some explanation is given in the additional affidavit-in-reply and since the aforesaid charge is in connection with some financial irregularity, this Court

so far as charge No.(1) is concerned. It is hoped that the State Government will properly consider this question at the time of initiating enquiry against the Government servant.

23. The petition is accordingly, partly allowed. Rule is made absolute to the aforesaid extent as indicated in the order with no order as to costs.

4th July, 2001 (P.B. Majmudar, J.)

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(apj)